TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 516.

HARRY J. JAQUITH, TRUSTEE, APPELLANT,

vs.

G. EDWIN ALDEN.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

FILED DECEMBER 9, 1902.

(18,744.)

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[illegible] Detweiler, Printers, Washington, D. C., December 17, 1902.

a United States Circuit Court of Appeals for the First Circuit, October Term, 1901.

HARRY J. JAQUITH, Trustee, Appellant,
v.
G. EDWIN ALDEN, Creditor, Appellee. } No. 444.

In the matter of F. N. Woodward *et al.*, bankrupts; *Ex parte* G. Edwin Alden, creditor.

Appeal from the district court of the United States for the district of Massachusetts from decree (Lowell, J.), June 21, 1902.

Transcript of Record of United States Circuit Court of Appeals for the First Circuit.

1 United States Circuit Court of Appeals for the First Circuit, October Term, 1901.

HARRY J. JAQUITH, Trustee, Appellant,
v.
G. EDWIN ALDEN, Creditor, Appellee. } No. 444.

In the matter of F. N. Woodward *et al.*, bankrupts; *Ex parte* G. Edwin Alden, creditor.

Transcript of Record of District Court.

(Filed in circuit court of appeals July 7, 1902.)

District Court of the United States, District of Massachusetts.

In re F. N. WOODWARD ET AL., Bankrupts. No. 5451. In Bankruptcy.

Proof of Debt of G. Edwin Alden.

(Filed March 10, 1902, and substituted for proof filed December 26, 1901.)

At Cambridge, in said district of Massachusetts, on the twenty-third day of January, A. D. 1902, came G. Edwin Alden, of Boston, in the county of Suffolk, in said district of Massachusetts, and made oath, and says that F. N. Woodward *et al.*, the persons by whom a petition for adjudication of bankruptcy has been filed, *was*, at and before the filing of said petition, and still *is*, justly and truly indebted to said deponent in the sum of five hundred forty-six and 89/100 dollars; that the consideration of said debt is as follows:

2 Merchandise as per itemized account annexed; that no part of said debt has been paid; that no note has been re-

ceived for said account, and no judgment rendered thereon; that there are no set-offs or counter-claims to the same; and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever.

G. EDWIN ALDEN, *Creditor.*

Subscribed and sworn to before me this twenty-third day of January, A. D. 1902.

JOSEPH P. KEEFE,
Justice of the Peace.

(Indorsed on back:) No. 5451.. In bankruptcy. Law of 1898. Proof of unsecured debt. In the matter of F. N. Woodward *et al.*, bankrupt-. G. Edwin Alden, creditor. Address 176 Federal St., Boston. $546.89. Filed March 10, 1902; substituted for claim filed Dec. 26, 1901. Johnson & Krebs, attorney-. Address 113 Devonshire St.

3 (Attached thereto is the following:)

Telephone main.

BOSTON, MASS., *Jan.* 22*nd*, 1902.

Mess. F. N. Woodward & Co., West Watertown, Mass., to G. Edwin Alden, Dr.

New England agent Diamond Rubber Co., reclaimed rubber; International Pulp Co., asbestine talc: Wm. H. Schell, tripolite; substitutes, black mineral, mineral white, etc. Rubber manufacturers' agent. Buyer of rubber scrap. Washing, grinding, and massing rubber a specialty. 176 Federal street, room 305.

Net 30 days.

Nov. 6.	2 cases old fine Para rubber, 732–143–589 net .91c...	$535	99
	Carting		50
		$536	49
Oct. 31.	13 bales asbestine, 2080 lbs., at 10 per 2000 lbs....	10	40
		$546	89

Certificate by Referee to Judge.

(Filed April 8, 1902.)

I, Henry E. Warner, Esq., one of the referees of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me the following question arose pertinent to the said proceedings:

One G. Edwin Alden petitioned to be allowed to prove as a creditor against the estate of the bankrupts a claim amounting to five

hundred forty-six and 89/100 dollars ($546.89) for merchandise sold to the bankrupts in the regular course of business as follows:

Oct. 18, 1901.	589 lbs. Para rubber, @ .91	$535	99
" " "	Cartage		50
" 30, "	2080 lbs. asbestine, @ .10	10	40
		$546	89

4 The bankrupts were adjudicated to be bankrupt upon their voluntary petition on the twenty-sixth day of November, 1901, and the evidence showed that they became insolvent about Aug. 15, 1901; that the creditor was ignorant of this fact, and that the sales were made and the payments received in the regular course of business, and without any idea or intention on the part of the creditor of obtaining a preference thereby.

The evidence further showed that the only transaction- between the petitioning creditor and the bankrupts during a period of four months prior to the adjudication were had after the bankrupts became insolvent, and were as follows:

Sales to Bankrupts by Creditor.

Aug. 17, 1901.	Rubber	$289	46
" 28, "	"	657	89
Sept. 30, "	"	644	28
Oct. 18, "	"	535	99
" " "	Cartage		50
" 31, "	Asbestine	10	40
		$2138	52

Payments of Bankrupts During a Period of Four Months Prior to Adjudication.

Sept. 4, 1901.	Payment of bill Aug. 17	$289	46
" 28, "	" " " " 28	657	89
Oct. 29, "	" " " " Sept. 30	644	28
		$1591	63
	Balance	546	89

As appears from the statement of the account the payment- were in each instance payments of single bills, and were made quite regularly.

It further appeared that the merchandise sold to the bankrupts was manufactured by them, and that the result of the transactions was to increase in value the estate of the bankrupts.

It will be seen that the last item of payment is Oct. 29, 1901, when $664.28 was paid to the creditor. After that the only further credit given by the creditor was the item of Oct. 31, $10.40.

The creditor asked me to rule that inasmuch as the balance for

which he asked to prove was greater than the amount of the
5 indebtedness at the beginning of the four months there was no preference which he should be ordered to surrender. I am, however, unable to take that view of the law. It seems to me that when any payment is made the question as to whether that payment is a preference must be determined by what took place afterward, and not by what took place before. If the last item of the transaction was the payment of $644.28 on Oct. 29, it seems clear to me that it would be a preference within the decision of the supreme court. The fact that after that the small sum of $10.40 was sold on credit does not seem to me to alter this fact or to do more than to allow that $10.40 to be deducted from the preference.

If the view contended for by the creditor were to be adopted it would amount to saying that any person whose dealings were entirely within the four months preceding bankruptcy could not under any circumstances receive a preference. In other words, if the test is whether or not the debt has been increased during the four months, one who was not a creditor at all at the beginning of the four months and is a creditor at the time of bankruptcy has a debt which has been increased during the four months and therefore cannot have received a preference.

In view of the rulings of the supreme court I am unable to take this view of the law, and therefore I rule that the payment of Oct. 29, being for an amount greater than the subsequent credit extended, is a preference, at least to the amount of $633.80, and that the claim cannot be allowed unless that amount is surrendered.

At the request of the creditor this question is certified to the judge for his opinion.

H. E. WARNER,
Referee in Bankruptcy.

Boston, April 2, 1902.

Decree on Certified Question.

Ex Parte G. EDWIN ALDEN.

At Boston, in said district, on the twenty-first day of June, A. D. 1902, upon the question certified to the court by the referee in said matter on the eighth day of April, A. D. 1902, now, therefore, after hearing arguments of A. T. Johnson, Esq., of counsel for the
6 creditor, and H. J. Jaquith, Esq., trustee, and after due consideration of the same:

It is hereby ordered and decreed that the judgment of the referee be and it hereby is reversed and the claim allowed proof.

It is further ordered that the clerk send a copy of this order by mail to the referee.

Witness the Honorable Francis C. Lowell, judge of said court, and the seal thereof, this twenty-first day of June, A. D. 1902.

[SEAL.] F. S. FISKE,
Deputy Clerk.

Opinion of the District Court.

June 21, 1902.

LOWELL, *J.:*

The bankrupts filed their voluntary petition November 26, 1901. They were insolvent since August 15. The creditor who seeks to prove was ignorant of this fact. On August 15 the bankrupts were not indebted to the creditor. Subsequent to that time the sales by the creditor to the bankrupts and the payments by the bankrupts to the creditor were as follows:

Sales to Bankrupts by Creditor.

Aug. 17, 1901.	Rubber	$289 46		
28, "	"	657 89		
Sept. 30, "	"	644 28		
Oct. 18, "	"	535 99		
18, "	Cartage	50		
31, "	Asbestine	10 40		
			$2138	52

Payments by Bankrupts to Creditor.

Sept. 4, 1901.	Payment of bill Aug. 17	$289 46		
28, "	" " " 28	657 89		
Oct. 29, "	" " " Sept. 30	644 28		
			1591	63
Balance			546	89

If all these transactions be treated as one, it follows under the rule of *Dickson v. Wyman* that no preference was given. The trustee contends, however, that only those advances made by the
7 creditor after the last payment received by the creditor from the bankrupts are to be taken into account in determining whether a preference was received or not. The contrary was decided by this court in *In re Topliffe*, 114 Fed. Rep. 323, and no sufficient reason has been shown in the learned and elaborate brief of counsel for the trustee to overrule the decision there reached.

The facts in the other case submitted, viz: *In re Woodward, Ex parte Atlas Chemical Co.*, were substantially the same, and no preference was given in either case.

The judgment of the referee is reversed and the claims are allowed proof.

Petition of Trustee for Appeal.

(Filed June 26, 1902.)

To the honorable the district judge of the United States for the district of Massachusetts:

And now comes Harry J. Jaquith, trustee in the above bankruptcy case, and complains that manifest error hath happened to the great damage of your petitioner in the record and final judgment of this court on the allowance of the claim of G. E. Alden, a creditor of the bankrupt, said claim as allowed being in excess of the sum of $500.

Wherefore, your petitioner prays that he may be allowed to appeal to the circuit court of appeals for the first circuit to the end that said error may be corrected and full and speedy justice done in this behalf.

And your petitioner files herewith an assignment of error which sets out separately and particularly each error asserted and intended to be urged.

HARRY J. JAQUITH.

June 26, 1902.

Allowed.
FRANCIS C. LOWELL,
U. S. District Judge.

8 *Assignment of Errors by Appellant.*

(Filed June 26, 1902.)

To the honorable the district judge of the United States for the district of Massachusetts:

And now comes Harry J. Jaquith, trustee of the above bankrupt estate, and says that in the record and final judgment in the above-entitled proceedings there is error in this, to wit:—

That the district judge erroneously determined that the admitted facts set out in the referee's certificate did not show a preference under the bankruptcy act which must be surrendered before the claim is allowed proof, and entered final judgment allowing the claim.

HARRY J. JAQUITH.

Request of Appellant as to Appeal Record.

(Filed June 28, 1902.)

BOSTON, *June* 28, 1902.

To the clerk of the United States district court for the district of Massachusetts:

No. 5451.

Please make up the appeal record in the matter of F. N. Woodward *et al.*, bankrupts, *Ex parte* G. Edwin Alden, as follows:

1. Proof of claim offered for allowance by G. E. Alden.
2. Certificate of referee, H. E. Warner, thereon.
3. Judgment of district judge.
4. Opinion of Judge Lowell.
5. Petition for appeal.
6. Assignment of errors.
7. Citation.
8. Request for making record.

HARRY J. JAQUITH,
Appellant, pro se.

9 *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to G. Edwin Alden, of Wellesley, in said district, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the first circuit, in the city of Boston, Massachusetts, on the twenty-fourth day of July next, pursuant to an appeal duly obtained from a decree of the district court of the United States for the district of Massachusetts, wherein Harry J. Jaquith, as he is trustee in bankruptcy of the estate of Frederick W. Woodward *et al.*, is appellant, and you are appellee, to show cause, if any there be, why the said decree entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Francis C. Lowell, judge of the district court of the United States for the district of Massachusetts, this twenty-sixth day of June, in the year of our Lord one thousand nine hundred and two.

FRANCIS C. LOWELL,
U. S. District Judge.

JUNE 28, 1902.

Service of the within citation in behalf of the within-named G. Edwin Alden is hereby accepted.

A. T. JOHNSON,
Attorney for G. Edwin Alden.

Clerk's Certificate.

UNITED STATES OF AMERICA, *District of Massachusetts,* } ss:

I, Frank H. Mason, clerk of the district court of the United States for the district of Massachusetts, certify that the foregoing are true copies of the following papers filed in said court in the cause in bankruptcy, No. 5451, Frederick N. Woodward, *et al.*, bankrupts.

1. Proof of debt of G. Edwin Alden.
2. Certificate by referee to judge.
3. Decree on certified question.
4. Opinion of the court.
5. Petition for appeal.
6. Assignment of errors.
8. Request of appellant as to appeal record.

and also the original citation (7) issued upon the appeal of the trustee in said matter, with the acceptance of service thereof.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at Boston, in said district, this fifth day of July, A. D. 1902.

[SEAL.] FRANK H. MASON, *Clerk.*

Stipulation for Costs.

(Filed in circuit court of appeals July 7, 1902.)

It is stipulated, subject to the approval of the court, that no costs shall be taxed in this appeal, each party to pay his own costs.

HARRY J. JAQUITH, *pro se.*
ARTHUR T. JOHNSON,
Attorney for G. Edwin Alden, Appellee.

11 *Proceedings in Circuit Court of Appeals.*

United States Circuit Court of Appeals for the First Circuit, October Term, 1902.

HARRY J. JAQUITH, Trustee, Appellant,
v.
G. EDWIN ALDEN, Creditor, Appellee. } No. 444.

In the matter of F. N. Woodward *et al.*, bankrupts; *Ex parte* G. Edwin Alden, creditor.

Before Colt, Putnam, and Aldrich, JJ.

Opinion of Circuit Court of Appeals.

October 28, 1902.

Per Curiam:

On the facts of this case it is governed by *Dickson v. Wyman*, 111 Fed. Rep. 726, in which our opinion was passed down on November 15, 1901.

The decree of the district court is affirmed.

Final Decree in Circuit Court of Appeals.

October 28, 1902.

This cause came on to be heard October 22 and 23, 1902, upon the transcript of the record of the district court of the United States for the district of Massachusetts, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed as follows: The decree of the circuit court is affirmed.

By the court,

JOHN G. STETSON, *Clerk.*

12 *Petition for Appeal.*

(Presented in circuit court of appeals and filed November 6, 1902, and delivered to counsel for appellant. Refiled November 12, 1902, with the allowance of a justice of the Supreme Court of the United States indorsed thereon and his certificate attached thereto.)

To the honorable the justices of the Supreme Court of the United States:

And now comes Harry J. Jaquith, trustee in bankruptcy, and complains that manifest error hath happened to the great damage of your petitioner in the record and final judgment of this court on the allowance of the claim of G. Edwin Alden, a creditor of the bankrupt, said claim as allowed being for the sum of $546.89.

And your petitioner says that the decisions of the circuit court of appeals for the different circuits are not uniform but vary upon the

question of the right of the appellee to have his said claim allowed prior to the surrender of the preferential payments appearing in the record.

Wherefore your petitioner prays that he may be allowed to appeal to the Supreme Court of the United States to the end that said error may be corrected and full and speedy justice done in this behalf, and that a uniform construction of the bankruptcy act may be had.

13 And your petitioner files herewith an assignment of errors which sets out separately and particularly each error asserted and intended to be urged.

HARRY J. JAQUITH,
Trustee in Bankruptcy, Estate of F. N. Woodward & Co.

Nov. 10, 1902.

Allowed:
R. W. PECKHAM,
Associate Justice Supreme Court United States.

Certificate of Justice of the Supreme Court.

(Attached to petition for appeal, filed in circuit court of appeals November 6, 1902, and refiled November 12, 1902.)

I certify that in my opinion the determination of the questions involved in the allowance of the claim of G. Edwin Alden against the bankrupt estate of F. N. Woodward and Company is essential to a uniform construction of the bankruptcy act throughout the United States.

Nov. 10, 1902.

R. W. PECKHAM,
Justice of the Supreme Court of the United States.

14 *Assignment of Errors.*

(Presented in circuit court of appeals and filed November 6, 1902.)

To the honorable the justices of the Supreme Court of the United States:

And now comes Harry J. Jaquith, trustee in bankruptcy, and says that in the record and final judgment in the above-entitled proceedings there is error in this, to wit:

1. That the circuit court of appeals for the first circuit erroneously determined that the appellee's claim as set out in the record did not show a preference under the bankruptcy act which must be surrendered before the claim is allowed proof, and entered final judgment affirming the decree of the district court allowing said claim without surrendering the preferential payments.

2. That the final judgment entered allowed the appellee to set off credits given to the bankrupt without security, for property which became part of the debtor's estate, said credits having been given prior to the preferential payments.

3. That the final judgment entered erroneously decided that the question of preference under the bankruptcy act depended on whether on the date of the adjudication the appellee was owed more or less than was owed to him at a period exactly four months prior to the adjudication.

HARRY J. JAQUITH,
Trustee in Bankruptcy, Estate of F. N. Woodward & Co.

15 *Citation on Appeal to Supreme Court.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to G. Edwin Alden, of Wellesley, in the State and district of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly obtained from a decree of the United States circuit court of appeals for the first circuit wherein Harry J. Jaquith, as he is trustee in bankruptcy of the estate of Frederick W. Woodward *et al.* is appellant and you are appellee, said appeal having been allowed by the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Le Baron B. Colt judge of the circuit court of the United States for the district of Massachusetts, this twelfth day of November, in the year of our Lord one thousand nine hundred and two.

LE BARON B. COLT,
Senior Circuit Judge, Presiding in said United States Circuit Court of Appeals for the First Circuit.

16 *Marshal's Return on Citation.*

UNITED STATES OF AMERICA, }
District of Massachusetts, } *ss:*

BOSTON, *Nov.* 26, 1902.

I hereby certify that on the 26th day of November, 1902, I served the within citation by giving to G. Edwin Alden in hand at Boston a true and attested copy thereof

Fees.

Service	2.00
Copy	.40
Travel	.12
	$2.52

BENJ. S. PICKERING,
Deputy United States Marshal.

17 United States Circuit Court of Appeals for the First Circuit, October Term, 1902.

HARRY J. JAQUITH, Trustee, Appellant,
v.
G. EDWIN ALDEN, Creditor, Appellee. } No. 444.

Clerk's Certificate.

I, John G. Stetson, clerk of the United States circuit court of appeals for the first circuit, certify that the pages, numbered 1 to 10, inclusive, hereto prefixed, contain and are a true copy of the transcript of record of the district court of the United States for the district of Massachusetts in the cause entitled in said district court, No. 5451, in bankruptcy, *In re* F. N. Woodward *et al.*, bankrupts. *Ex parte* G. Edwin Alden, creditor.

I further certify that said cause was heard in said circuit court of appeals on October 22 and 23, 1902, upon said transcript of record of said district court.

I further certify that page numbered 11, hereto prefixed, contains and is a true copy of the opinion of the said circuit court of appeals announced on October 28, 1902, and of the final decree of said circuit court of appeals entered on October 28, 1902, in said cause.

I further certify that pages numbered 12, 13 and 14, hereto prefixed, are true copies of the petition for appeal, with the certificate of a justice of the Supreme Court annexed thereto, and of the assignment of errors, filed in said cause.

I further certify that pages 15 and 16, hereto prefixed, contain and are the original citation issued upon the appeal to the Supreme Court of the United States of said Harry J. Jaquith, trustee, appellant, in said circuit court of appeals, with the return of the marshal thereon.

I further certify that pages 1 to 16, hereto prefixed, contain and are a true copy of the record and all proceedings in said cause
18 determined in said circuit court of appeals.

Seal United States Circuit Court of Appeals, First Circuit.

In testimony whereof, I hereunto set my hand and affix the seal of said United States circuit court of appeals for the first circuit, at Boston in said first circuit, this second day of December, A. D. 1902.

JOHN G. STETSON, *Clerk.*

Endorsed on cover: File No. 18,744. U. S. circuit court appeals, 1st circuit. Term No. 516. Harry J. Jaquith, trustee, appellant, *vs.* G. Edwin Alden. Filed December 9, 1902.